

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Peace Officer License
of Jason Patrick Marino

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held on March 25, 2010, at the Office of Administrative Hearings by Administrative Law Judge Beverly Jones Heydinger, pursuant to the Notice and Order for Hearing issued on September 11, 2009. The hearing record closed upon receipt of the final posthearing memoranda, April 26, 2010.

Appearances: Michele M. Owen, Assistant Attorney General, appeared on behalf of the Board of Peace Officer Standards and Training, Complaint Investigation Committee (Board).

Richard A. Beens, Attorney at Law, appeared on behalf of Jason Patrick Marino, Respondent.

STATEMENT OF THE ISSUES

1. Was Respondent convicted of Misconduct of a Public Officer or employee, in violation of Minn. Stat. § 609.43 (2) and (3); and
2. Did Respondent's conviction constitute grounds justifying the Board taking disciplinary action against Respondent's peace officer license?

The parties stipulated that Respondent was convicted of Misconduct of a Public Officer, in violation of Minn. Stat. § 609.43 (2) and (3). The Board demonstrated that it was reasonable to take disciplinary action against Respondent's peace officer license, but the Respondent presented sufficient evidence of mitigation to warrant discipline less severe than revocation of the license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Complaint Investigation Committee issued a Notice and Order for Hearing and Prehearing Conference on September 11, 2009, initiating this contested

case, to determine whether disciplinary action should be taken by the Board against Respondent's license as a peace officer.

2. The Respondent has been licensed as a peace officer in the State of Minnesota since 2000. He was born in Saint Paul, Minnesota, on April 2, 1975, and attended school and has lived in the Saint Paul area throughout his life. He has a Bachelor's Degree in law enforcement from Metropolitan State University. The Respondent is married with three children.¹

3. Respondent was briefly employed as a peace officer for the Centennial Lakes Police Department, and then joined the Maplewood Police Department.²

4. On April 28, 2006, the Respondent was on duty with another officer when they were approached by A.M.B. Apparently, A.M.B. made derogatory remarks to the officers, and the Respondent made derogatory remarks to A.M.B. A.M.B. was placed in the back of the Respondent's squad car. The subsequent events are disputed, but A.M.B. called 911 and alleged that Respondent had picked him up, driven him to a remote location, and threatened to beat him up. Following an investigation, Respondent was charged with several offenses, including kidnapping, false imprisonment, terroristic threats, misconduct of a public officer or employee, and fifth degree assault.³ The details of the investigation are set forth in Exhibit 2.

5. A jury found Respondent guilty of misconduct of a public officer or employee, in violation of Minn. Stat. § 609.43 (2) and (3), and fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. (1) and (2).⁴ The Respondent was acquitted of the remaining charges. The conviction was affirmed by the Minnesota Court of Appeals.⁵

6. The Respondent was ordered to pay a fine and sentenced to probation and community service⁶

7. The City of Maplewood placed the Respondent on an administrative suspension with pay from April 28, 2006, to June 15, 2007. He also received a 10-day suspension without pay following the criminal trial.⁷

8. Prior to the incident on April 28, 2006, the Respondent received good performance evaluations and there were no disciplinary actions against him.⁸ Since returning to work in 2007, one complaint has been made against the Respondent, but an investigation determined that the complaint was baseless. There has been no

¹ Transcript (T.) at 63-64 (Respondent).

² T. at 65 (Respondent).

³ Complaint Investigation Committee (CIC) Exhibit (Ex.) 5 at 5.

⁴ Stipulation As To Certain Facts, ¶ 1.

⁵ CIC Ex. 5, *State v. Marino*, unpublished, A07-1129, Sept. 16, 2008.

⁶ CIC Exs. 3 and 4.

⁷ T. at 68-69 (Respondent); Stipulation to Certain Facts, paragraph 2, Exs. A, B, and C to Notice and Order for Hearing and Prehearing Conference.

⁸ Respondent's Exs. 11-21.

disciplinary action against the Respondent.⁹ He has received uniformly positive performance reviews.¹⁰

9. Three sergeants with the Maplewood Police Department testified in support of the Respondent. Sergeant Flint Karis has been employed by the Police Department for 27 years and is a patrol supervisor. For a period of time in 2005, he was the Respondent's direct supervisor. He has also observed the Respondent's performance since 2007. In his opinion, the Respondent is one of the most outstanding, productive and well-rounded police officers with whom he has worked.¹¹

10. For several months in 2009, Sergeant Michael Dugas was a supervisor on the night shift, which overlaps for six hours with the afternoon shift to which the Respondent is assigned.¹² Sergeant Dugas considers the Respondent to be an excellent, hard-working, intelligent officer.¹³ Sergeant Dugas has also worked with the Respondent on a narcotics investigation.¹⁴

11. Sergeant Daniel Busack has been the Respondent's primary supervisor since October 2007, and observes the Respondent's work three to four times each day. Throughout that period, the Respondent's performance has been excellent. Sergeant Busack described the Respondent as "well-rounded," with good instincts and a good team player.¹⁵ In approximately March, 2010, Sergeant Busack recommended that the Respondent receive a Letter of Recognition for his efforts leading to the arrest of a drug dealer.¹⁶ The Respondent has demonstrated good rapport with the public and volunteered to work with Cub Scouts and allow the public to ride along with him.¹⁷

12. The Respondent was selected by the Chief of Police to coordinate off-duty assignments for Maplewood police officers.¹⁸ He has demonstrated an outstanding ability to organize and coordinate the off-duty work.¹⁹

13. None of the sergeants who testified were familiar with the circumstances leading to the Respondent's criminal convictions.²⁰

14. The Respondent loves being a police officer and makes every effort to perform the job responsibly and professionally. Although he disputed the facts concerning his convictions, he has come to terms with them and wants to move forward,

⁹ T. at 29-30 (Dugas); at 71 (Respondent).

¹⁰ Respondent's Exs. 22-26; T. at 44 (Busack).

¹¹ T. at 11, 14-16 (Karis).

¹² T. at 28-29, 32 (Dugas).

¹³ T. at 29, 37 (Dugas).

¹⁴ T. at 31-32, 36-37 (Dugas).

¹⁵ T. at 40-43, 48-51, 57-58 (Busack).

¹⁶ T. at 48-51 (Busack); *see also* Respondent's Ex. 9.

¹⁷ T. at 44-47, 57 (Busack); T. at 76-77 (Respondent).

¹⁸ T. at 72 (Respondent).

¹⁹ T. at 43 (Busack).

²⁰ T. at 17 (Karis); at 30, 38 (Dugas); at 52-53 (Busack).

to perform his duties in a manner that is above reproach, and to convey to less senior officers the importance of maintaining good records and reports.²¹

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board of Peace Officer Standards and Training and the Administrative Law Judge have jurisdiction to consider taking disciplinary action against the Respondent.²²

2. The Respondent received due, proper and timely notice of the time and place of the hearing and the basis for the Board's action. This matter is properly before the Board of Peace Officer Standards and Training and the Administrative Law Judge.

3. The Board of Peace Officer Standards and Training, Complaint Investigation Committee, has complied with all relevant procedural requirements.

4. The burden of proof is on the Board of Peace Officer Standards and Training, Complaint Investigation Committee, to demonstrate by a preponderance of the evidence that there is one or more grounds for imposing discipline against the Respondent.

5. The parties have stipulated that the Respondent was convicted of a gross misdemeanor for violation of, Minn. Stat. §§ 609.43 (2) and (3), which makes it a crime if a public officer or employee:

(2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or

(3) under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights,...

6. Minn. R. 6700.1600 (C) and (L) provide, in pertinent part, that a violation of any of the following standards of conduct by a license holder constitutes grounds for disciplinary action:

C. being convicted of a felony or gross misdemeanor in this state ... , whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or not contest;

L. being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of

²¹ T. at 85-86, 89 (Respondent).

²² Minn. Stat. §§ 214.10, subd. 2 (a); 626.8432; and 14.50.

guilt, or a no contest plea of a violation of Minnesota Statutes, section ...
609.43....

7. The Board has demonstrated by a preponderance of the evidence that it has the authority to take disciplinary action under Minn. R. 6700.1600 (C) and (L), based on the Respondent's convictions under § 609.43.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that:

The Board of Police Officer Standards and Training impose discipline on the Respondent, with due regard for his overall record as an officer.

Dated: May 24, 2010

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The POST Board will make the final decision after a review of the record. The POST Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the POST Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. Parties should contact Neil W. Melton, Executive Director, Peace Officer Standards and Training Board, 1600 University Avenue, Suite 200, St. Paul, MN 55104-3825, (651) 643-3060, to learn the procedure for filing exceptions or presenting argument.

If the POST Board fails to issue a final decision within 90 days of the close of the record, the Board must return the record of the proceeding to the administrative law judge for consideration of disciplinary action. The record closes upon the filing of exceptions to the Report and the presentation of argument to the POST Board, or upon the expiration of the deadline for doing so. The POST Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Board has the responsibility to set standards for qualifications to become licensed as a peace officer and to establish the grounds for which a peace officer's license may be subject to disciplinary action. One of the functions of the Standards of Conduct, set forth in Minn. R. 6700.1600, is to protect the public from peace officers who exceed or abuse their authority. Licensed peace officers have the authority to arrest people, carry guns, and use reasonable force to carry out their duties. Thus, it is imperative that peace officers are able to properly exercise their authority within proper legal boundaries. The interest of the public outweighs any interest that a peace officer may have in avoiding disciplinary action against his license.

The Complaint Investigation Committee asserts that discipline is warranted because of the Respondent's convictions and violations of the Board's rule. Although the Complaint Investigation Committee acknowledges that other sanctions have been imposed on the Respondent, it has an obligation to take appropriate civil administrative action. It is obvious from reading the rule that violations are intended to have separate consequences from the underlying conviction. The Board's disciplinary authority is not eliminated because the peace officer has served the imposed criminal sentence.

The Respondent asks for leniency in the imposition of discipline, in part because he has fully served his criminal sentence, been subject to the public shame of the convictions, completed court-ordered probation without incident, been suspended without pay for 10 days by the City of Maplewood, and has lost approximately \$16,000 in overtime and off-duty pay. In addition, he points to his otherwise excellent record, his commitment to the profession, and the respect his supervisors and fellow officers have for him. He points to his efforts to assure that no similar incident occurs, and his commitment to perform his duties in such a manner that there is no question about his professionalism and commitment to serve the public. To the extent that the purpose of imposing a suspension is to assure that there is the opportunity for rehabilitation, the Respondent points to his fine record since returning to work in 2007. It is also significant that the Respondent was found not guilty of several of the charges against him.

Although the Respondent's evidence is not relevant to determining whether the Board's rule was violated, it should be considered by the Board in weighing the appropriate sanction.²³

The Complaint Investigation Committee minimizes the support that the Respondent received from fellow officers, in part because it perceived that at least one of the officers had a personal relationship with the Respondent and described him as a

²³ See e.g. *Fahlgren v. State Board of Teaching*, 545 N.W. 2d 901, 908 (Minn. 1996).

“friend.” However, the record does not support the conclusion that the relationship exceeds ordinary contact between co-workers. Sergeant Busack testified that he and the Respondent go to Twins games a few times each year with a group of other officers, and get together for a family barbecue once or twice a year. This type of social interaction between co-workers is not unusual, nor does it suggest that Sergeant Busack cannot impartially supervise or evaluate the Respondent’s performance. Sergeant Busack credibly testified that the Respondent’s performance has been excellent, even better since returning to work following the criminal conviction.²⁴ Sergeant Busack specifically mentioned the Respondent’s tact and empathy when working with witnesses and victims.²⁵

The Complaint Investigation Committee has demonstrated that discipline against the Respondent’s license is warranted, but the specific discipline imposed should take into account the Respondent’s otherwise excellent record, his determination to perform his duties in a manner that is above reproach, and the support he has received from his supervisors and colleagues. Public censure and probation, as well as reimbursement for the Board’s costs of investigation and oversight, would adequately protect the public.

B. J. H.

²⁴ T. at 40 (Busack).

²⁵ T. at 46 (Busack).